

## **REMARKS/ARGUMENTS**

The rejections presented in the Office Action dated April 28, 2009 (hereinafter Office Action) have been considered. After entry of the amendment, claims 54-63, 66-70, 78, 80, and 84 will remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Applicants wish to thank Examiner Patricia Mallari for the courtesy of a telephone interview which took place on May 28, 2009, and in which the undersigned attorney Stephen Jensen participated on behalf of applicants. In connection with the interview, the undersigned proposed amendments to independent claims 38 and 81 (which amendments are being respectively incorporated into the amendments being made herein to convert various dependent claims to independent form), and urged that they be entered on the basis that they are merely clarifying, that they are necessary within the meaning of 37 C.F.R. §1.116(b)(3), and that they were not presented earlier because the restriction requirement of 12/31/2008 contained no indication that the language at issue was indefinite. In response, Examiner Mallari indicated that she would not enter such amendments if submitted in an after-final response.

The Office Action rejected claims 38-42, 44, 46-48, 50-72, 75-81, and 83-86 under 35 U.S.C. §112, second paragraph, as being indefinite. In response, Applicants are rewriting claims 54, 66-70, 78, and 80 in independent form to incorporate the language of base claim 38, and rewriting claim 84 in independent form to incorporate the language of base claim 81, but in each case revising the language from the base claims to include the clause “the one or more characteristics including a first respiration characteristic and a second respiration characteristic different from the first respiration characteristic” for proper antecedent basis. The remaining claims being rejected are being canceled without prejudice. Withdrawal of the rejections is respectfully requested.

The Office Action rejected claims 38-40, 46, 47, 50-53, 64, 71, 72, 75-77, 79, 81, 82, and 85 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 5,860,918 (Schradi

et al.). The Office Action also rejected claim 41 under 35 U.S.C. §103(a) as being unpatentable over Schradi in view of U.S. Patent 6,126,608 (Kemme et al.). The Office Action also rejected claim 42 under 35 U.S.C. §103(a) as being unpatentable over Schradi in view of U.S. Patent Application Publication US 2004/0210261 (King et al.). The Office Action also rejected claims 44 and 65 under 35 U.S.C. §103(a) as being unpatentable over Schradi in view of King.

In response, Applicants note that each of these rejected claims has been canceled without prejudice, rendering the rejections moot. Withdrawal of the rejections is requested.

To the extent Applicants have not responded to any characterization by the Examiner of the asserted art or of Applicants' claimed subject matter, or to any application by the Examiner of the asserted art to any claimed subject matter, Applicants wish to make clear for the record that any such lack of response should not be interpreted as an acquiescence to such characterizations or applications. A detailed discussion of each of the Examiner's characterizations, or any other assertions or statements beyond that provided above is unnecessary. Applicants reserve the right to address in detail any such assertions or statements in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.105PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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